

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

GREGORY DONNELLY,

Petitioner,

V.

BERNARD BRADY,

Respondent.

Civil Action No. 04-12706-RWZ

RESPONDENT'S SUPPLEMENTARY BRIEF
IN SUPPORT OF HIS MOTION TO DISMISS PETITION

Pursuant to this Court’s Order dated July 14, 2005, Respondent Bernard Brady (the “Respondent”), hereby submits this supplementary brief in support of his motion to dismiss the habeas corpus petition (the “Petition”) filed by Petitioner Gregory Donnelly (the “Petitioner”). This brief begins by clarifying the Respondent’s position regarding the Petitioner’s action and this action’s present procedural posture. It then sets forth a detailed chronology of the litigation of the Petitioner’s criminal cases in the Massachusetts courts, as requested by the Court. Based on that chronology, the Respondent then reiterates the argument advanced in the Respondent’s Motion to Dismiss Petition that the Petitioner’s action is barred by the applicable statute of limitations.

CLARIFICATION OF THE RESPONDENT'S POSITION AND THE PROCEDURAL POSTURE OF THIS ACTION

At the outset, the Respondent seeks to clarify his position regarding the Petitioner's habeas corpus action and this action's present procedural posture. The Respondent respectfully notes that, contrary to the suggestion in the Court's Order of July 14, 2005, he has not waived his

right to dispute the merits of the Petition. Rather, the Respondent moved to dismiss the Petition on statute of limitations grounds prior to filing an answer in order to have the case disposed of at the outset based on a fatal defect in the Petition, thereby saving the parties and the Court the burden of having to litigate an unsustainable Petition on the merits. The Respondent reserved his right to brief the merits of the Petition in the event that his Motion to Dismiss Petition is denied. Specifically, the Respondent indicated as follows in footnote 1 of his Memorandum of Law in Support of His Motion to Dismiss Petition:

Since the petition must be dismissed for the grounds stated herein, the Respondent does not address herein the merits of the Petition. Should this Court rule that the Petitioner may proceed with his habeas corpus action, the Respondent respectfully requests the opportunity to file an answer and a proposed scheduling order for the parties to brief the merits of the Petition.

(Mem. Supp. Mot. Dismiss Pet. at 1 n.1.)

The use of a motion to dismiss in this manner is entirely appropriate in a habeas corpus case, as in other civil litigation. The Advisory Committee Notes to Rule 5 of the Rules Governing Section 2254 Cases (the “Habeas Corpus Rules”), which deals with responses to petitions, state as follows:

The revised rule does not address the practice in some districts, where the respondent files a pre-answer motion to dismiss the petition. But revised Rule 4 permits that practice and reflects the view that if the court does not dismiss the petition [after preliminary review], it may require (or permit) the respondent to file a motion.

Habeas Corpus Rule 5 advisory comm. notes to 2004 am. The filing and disposition of a pre-answer motion to dismiss is also provided for under Federal Rule of Civil Procedure 12(b)(6), which may be applied to this proceeding pursuant to Habeas Corpus Rule 11. Habeas Corpus Rule 11 (“The Federal Rules of Civil Procedure, to the extent they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules.”).

Indeed, it is well-established that “an affirmative defense may be adjudicated on a motion to dismiss for failure to state a claim,” provided that “the facts that establish the defense [are] definitively ascertainable from the allegations of the complaint, the documents (if any) incorporated therein, matters of public record, and other matters of which the court may take judicial notice . . . [and] the facts so gleaned . . . conclusively establish the affirmative defense.” In re Colonial Mortgage Bankers Corp., 324 F.3d at 16; see also Blackstone Realty LLC v. FDIC, 244 F.3d 193, 197 (1st Cir. 2001) (noting well-settled concept that “affirmative defenses . . . may be raised in a motion to dismiss an action for failure to state a claim.”).

Such motions are, in fact, the proper method for testing the legal sufficiency of an initial pleading. Hall v. Virginia, 385 F.3d 421, 427 (4th Cir. 2004) (“[T]he purpose of Rule 12(b)(6) is to test the legal sufficiency of a complaint.”); Kingman Park Civic Ass’n v. Williams, 348 F.3d 1033, 1040 (D.C. Cir. 2003) (“A Rule 12(b)(6) motion is intended to test the legal sufficiency of the complaint.”); Riddle v. Egensperger, 266 F.3d 542, 550 (6th Cir. 2001) (“[A] motion to dismiss for failure to state a claim upon which relief can be granted . . . tests the legal sufficiency of the plaintiff’s complaint.”); De Jesus v. Sears, Roebuck & Co., 87 F.3d 65, 69 (2nd Cir. 1996) (“A motion to dismiss is designed to test the legal sufficiency of the complaint, and thus does not require the Court to examine the evidence at issue.” (quoting Carey v. Mount Desert Island Hosp., 910 F. Supp. 7, 9 (D. Me. 1995))); In Re Healthcare Compare Corp. Secs. Litig., 75 F.3d 276, 279 (7th Cir. 1996) (referring to “motions to dismiss that test the legal sufficiency of a complaint”); Crutcher v. Aetna Life Ins. Co., 746 F.2d 1076, 1084 (5th Cir. 1984) (“Of course, a motion to dismiss under Rule 12 is the proper method of testing the legal sufficiency of the complaint.”); North Star Int’l v. Arizona Corp. Comm’n, 720 F.2d 578, 581 (9th Cir. 1983) (“The purpose of a motion to dismiss under rule 12(b)(6) is to test the legal sufficiency of the

complaint.”); Peck v. Hoff, 660 F.2d 371, 374 (8th Cir. 1981) (“A motion to dismiss under Rule 12(b)(6) is the usual and proper method of testing the legal sufficiency of the complaint.”).

When such a motion has been brought, dismissal may be ordered where “it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); see also, e.g., Conley v. Gibson, 355 U.S. 41, 45-46 (1957) (stating that dismissal may be allowed where “it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief”); In re Colonial Mortgage Bankers Corp., 324 F.3d at 15 (indicating that dismissal is allowable “if the plaintiff’s factual averments hold out no hope of recovery on any theory adumbrated in [his] complaint”); Berner, 129 F.3d at 25 (stating that decision on motion to dismiss requires determination of “whether the pleading encompasses any set of facts that would entitle the plaintiff to relief”); Correa-Martinez, 903 F.2d at 52 (stating that dismissal is allowable “if it clearly appears, according to the facts alleged, that the plaintiff cannot recover on any viable theory”).

In this case, the Respondent’s Motion to Dismiss Petition raised an affirmative defense arising from statutory law. The facts supporting that defense are entirely ascertainable through public records and clearly establish that the Petitioner’s action is not cognizable. Accordingly, the Respondent’s invocation of the statute of limitations through a motion to dismiss prior to addressing the merits of the Petition was proper. Moreover, the allowance of that motion is warranted, as made clear in the chronology and argument that follows. In particular, the Respondent calls attention to Section III of the chronology, as that section is most directly relevant to the statute of limitations issue.

The Respondent nevertheless continues to reserve his right to address the merits of the Petition through an Answer and further briefing should the Court deny his Motion to Dismiss Petition. The Respondent expects that, in that event, such briefing would be limited to the issues raised in the Petition – that is, whether the Petitioner’s due process rights under the U.S. Constitution’s Fourteenth Amendment were violated by his allegedly being “deprived of the benefit to specific performance to the terms of the ‘forthwith’ state sentencing scheme” imposed at his 1993 sentencing. (Pet. ¶ 12.)

CHRONOLOGY

I. The Petitioner’s Convictions Prior to the Conviction Attacked in the Petition

A. The 1980 Conviction

On July 15, 1980, a Plymouth County, Massachusetts, grand jury returned indictments against the Petitioner for armed robbery, in violation of M.G.L. c. 265, § 17, and assault and battery by means of a dangerous weapon, in violation of M.G.L. c. 265, § 15B. (Plymouth Docket Nos. 74020 & 74021, true and accurate copies of which are attached hereto as Exhibit EE.)¹ At his July 18, 1980 arraignment, the Petitioner pled not guilty to both charges. (Id.) A jury was empanelled on September 4, 1980. (Id.) The following day, the jury found him guilty on both charges, and he was sentenced to serve a term of twenty years on the armed robbery charge and ten years on the assault and battery charge. (Id.) He was given forty-two days of credit toward his twenty-year armed robbery sentence. (Id.) See also Commonwealth v. Donnelly, 37 Mass. App. Ct. 1117, 641 N.E.2d 1366 (1994), Exhibit O.

During his initial incarceration on these 1980 convictions and certain additional convictions, the Petitioner was awarded 198.5 days of earned time resulting from training,

¹ Exhibits A through DD were filed with the Respondent’s Motion to Dismiss Petition. Exhibits beginning with Exhibit EE accompany this Supplementary Brief.

employment and education. (DOC Reports, true and accurate copies of which are attached hereto as Exhibit FF, at 7.)

B. The 1988 Conviction

Following his release,² the Petitioner was involved in an October 22, 1987 driving incident that resulted in his arrest. He was arraigned on the following charges in the Gardner, Massachusetts, District Court on November 18, 1987: operating under the influence of liquor, in violation of M.G.L. c. 90, § 24; operating a motor vehicle without a license, in violation of M.G.L. c. 90, § 10; providing a false name to a police officer, in violation of M.G.L. c. 268, § 34; and operating after the revocation of a license or right to operate, in violation of M.G.L. c. 90, § 23. (Gardner Docket No. 8763-CR-1939, a true and accurate copy of which is attached to the accompanying Appendix as Exhibit GG.) He pled not guilty. (Id.) On January 15, 1988, he was found guilty on all charges. (Id.) On the charge of operating under the influence of liquor, he received a sentence of two years in a house of correction, ninety days of which was to be served forthwith and the balance of which was to be suspended for two years. (Id.) On the charge of operating after the revocation of a license or right to operate, he received a sentence of sixty days in a house of correction, to be served concurrently with the sentence on the charge of operating under the influence of liquor. (Id.) The other convictions were filed. (Id.)

During his initial incarceration on this 1987 conviction, the Petitioner was awarded 112.5 days of earned time resulting from training, employment and education. (DOC Reports, Exhibit FF, at 8.) On September 8, 1988, the Petitioner was paroled to a residential alcohol program.

² The date of the Petitioner's release is not clear. Records supplied to the Respondent's counsel by the Massachusetts Department of Correction list the Petitioner's date of release as May 25, 1990. Clearly, though, he had been released at least as early as October 22, 1987. The Respondent will supply to the Court any additional or clearer information that he is able to obtain.

(Administrative Chronology, a true and accurate copy of which is attached hereto as Exhibit HH, at 1.)

II. The Litigation Leading to the Conviction Attacked in the Petition

A. The 1989 Arrest, and Initial Trial and Convictions in 1990

On June 3, 1989, while the Petitioner was on probation and parole, he was involved in a motor vehicle collision resulting in two fatalities and was arrested. Commonwealth v. Donnelly, 37 Mass. App. Ct. 1117, 641 N.E.2d 1366 (1994), Exhibit O. As a result, a parole revocation warrant was lodged against the Petitioner effective June 6, 1989 with respect to the sentence arising from his 1980 conviction. Id. However, no final revocation hearing was ever held. Id.

On July 18, 1989, a Middlesex County, Massachusetts, grand jury returned nine indictments against the Petitioner arising from the June 3, 1989 motor vehicle collision. Specifically, he was charged with the following: two counts of felony motor vehicle homicide, in violation of M.G.L. c. 90, § 24G, one count of operating a motor vehicle while intoxicated causing serious bodily injury, in violation of M.G.L. c. 90, § 24L, one count of operating under the influence of an intoxicating substance, one count of operating to endanger, one count of assault, and two counts of manslaughter. See also Commonwealth v. Donnelly, 33 Mass. App. Ct. 189, 190-91 & n.1, , 597 N.E.2d 1060, 1061-62 n.1 (1992).

As a consequence of these indictments, on August 25, 1989, the Petitioner's probation in connection with his 1988 conviction was terminated, and he was ordered to serve the remainder of the house of correction sentence that had been imposed on that conviction. (Gardner Docket No. 8763-CR-1939.) That remainder totaled two years, less ninety days. (Id.) See also Commonwealth v. Donnelly, 37 Mass. App. Ct. 1117, 641 N.E.2d 1366 (1994), Exhibit O.

Following a trial on the charges arising from the June 3, 1989 motor vehicle collision, the Petitioner was found guilty on January 10, 1990 of both counts of felony motor vehicle homicide and each count of the following: operating while intoxicated causing serious bodily injury, operating under the influence, operating to endanger, and assault. Commonwealth v. Donnelly, 33 Mass. App. Ct. 189, 190-91 & n.1, , 597 N.E.2d 1060, 1061-62 n.1 (1992). He was found not guilty on the remaining counts. Id. On January 24, 1990, he was sentenced on the vehicular homicide convictions to two consecutive terms of between thirteen and fifteen years at MCI-Cedar Junction “forthwith . . . [t]he defendant having spent 4 days in confinement prior to such sentence awaiting and during trial.” (Middlesex Indictments & Initial Dockets, true and accurate copies of which are attached hereto as Exhibit II.) The trial judge later revised and revoked the vehicular homicide sentences, ordering that they run concurrently. (Order of Feb. 28, 1990, a true and accurate copy of which is attached hereto as Exhibit JJ) On the conviction for operating while intoxicated causing serious bodily injury, he was sentenced to a term of between fourteen and one-half to fifteen years at MCI-Cedar Junction, suspended for six years, beginning from and after the sentences on the vehicular homicide convictions. (Middlesex Indictments & Initial Dockets, Exhibit II.) As probation conditions, the court prohibited him from using alcohol or driving. (Id.)

The Petitioner appealed his 1990 convictions to the Massachusetts Appeals Court (the “Appeals Court”). In an August 18, 1992 decision, that court reversed his convictions for motor vehicle homicide and operating while intoxicated causing serious bodily injury, remanded the case to the Superior Court for a new trial on those charges, and affirmed the convictions on the remaining counts. (Middlesex Docket 1989-02016, Exhibit A.) Commonwealth v. Donnelly, 33 Mass. App. Ct. 189, 201, 597 N.E.2d 1060, 1068 (1992), Exhibit M. The Massachusetts

Supreme Judicial Court (“SJC”) denied further appellate review of the Appeals Court’s decision on October 1, 1992. Commonwealth v. Donnelly, 413 Mass. 1107, 600 N.E.2d 1000 (1992) (table decision), Exhibit N.

B. The Conviction Attacked in the Petition: The 1993 New Trial and Conviction Arising from the 1989 Arrest

On May 10, 1993, a new trial on the charges of felony motor vehicle homicide and the charge of operating while intoxicated causing serious bodily injury was commenced in the Middlesex County Superior Court before the Honorable Regina L. Quinlan and a jury. However, a mistrial was declared on May 12, 1993. (Middlesex Docket 1989-02016; Middlesex Docket 1989-02017, a true and accurate copy of which is attached hereto as Exhibit B; Middlesex Docket 1989-02018, a true and accurate copy of which is attached hereto as Exhibit C.) On May 13, 1993, the Petitioner pled guilty, withdrew that plea, and then entered a new guilty plea pursuant to a plea agreement. (Middlesex Docket 1989-02016; Middlesex Docket 1989-02017; Middlesex Docket 1989-02018.) His guilty plea was accepted and a sentence was imposed by Justice Quinlan. (Middlesex Docket 1989-02016; Middlesex Docket 1989-02017; Middlesex Docket 1989-02018.) On the charges of motor vehicle homicide while intoxicated, he was sentenced to serve two concurrent terms of between ten and ten and a half years at MCI-Cedar Junction. (Middlesex Docket 1989-02016; Middlesex Docket 1989-02017.) In connection with one of the charges, the docket reflects the Court’s order that “[t]his sentence to take effect forthwith notwithstanding the sentence now being served at M.C.I., Concord.” (Middlesex Docket 1989-02016.) On the charge of operating while intoxicated causing serious bodily injury, he was sentenced to a suspended term of between six and eight years at MCI-Cedar Junction and a five-year probationary term, to commence from and after the expiration of the sentence on the other motor vehicle charges. (Middlesex Docket 1989-02018.) The Petitioner

was also given credit for 1174 days of time served between his June 3, 1989 arrest and the August 18, 1992 reversal of his convictions (Middlesex Docket 1989-02016; Middlesex Docket 1989-02017), was barred from operating a motor vehicle in Massachusetts, and was ordered to submit to evaluation for alcohol treatment if deemed necessary by the Probation Department.

III. The Petitioner's State-Court Litigation Regarding His Sentence and Jail Time Credits

On June 2, 1993, the Petitioner filed a Motion for Jail Time, in which he sought credit for the time in between the Appeals Court's overturning of his conviction on August 18, 1992 and his pleading guilty on May 13, 1993. (Middlesex Docket 1989-02016; Middlesex Docket 1989-02017.) Donnelly, 37 Mass. App. Ct. 1117, 641 N.E.2d 1366. His motion was denied on June 23, 1993, without prejudice to his ability to seek declaratory relief through a civil action. (Middlesex Docket 1989-02016; Middlesex Docket 1989-02017.) He filed a Notice of Appeal of that decision on July 6, 1993 (Middlesex Docket 1989-02016; Middlesex Docket 1989-02017), and his appeal was entered on the docket of the Appeals Court on August 26, 1993 (Appeals Ct. Docket 1993-P-1149, Exhibit H). He also filed a civil action seeking declaratory relief on July 14, 1993, but that action was dismissed on September 15, 1993. (Middlesex Docket 1993-04083, Exhibit D.) Additionally, on October 6, 1993, the Petitioner filed a Motion to Amend, and a motion for reconsideration of the court's denial of His Motion for Jail Time and for leave to file an Amended Motion for Post Conviction Relief. (Middlesex Docket 1989-02016.) The latter motion was denied on December 1, 1993. (Id.) He then filed a Supplemental Motion for Reconsideration of His Motion for Jail Time on December 6, 1993, as well as a Motion for Post-Conviction Relief on December 13, 1993. (Id.) The Motion for Post-Conviction Relief was denied on March 7, 1994, and the Petitioner filed a Notice of Appeal of that decision on March 28, 1994. (Id.) On November 4, 1994, the Appeals Court remanded the Petitioner's case to the

Superior Court for recalculation of his jail credit time. (Id.; Appeals Ct. Docket 1993-P-1149.) Donnelly, 37 Mass. App. Ct. 1117, 641 N.E.2d 1366. The Petitioner nevertheless filed an Application for Leave to Obtain Further Appellate Review of the Appeals Court's decision on November 18, 1994, which application was denied by the SJC on January 4, 1995. (SJC Docket FAR-07551, Exhibit I.) Commonwealth v. Donnelly, 419 Mass. 1103, 646 N.E.2d 409 (1995) (table decision), Exhibit P. The Superior Court awarded him credit for 139 days of time served on April 1, 1995. (Middlesex Docket 1989-02016.)

Then, on or about April 13, 1995, the Petitioner filed a letter to Justice Quinlan that, in part, raised issues concerning his sentence. (Letter from Donnelly to Quinlan of 4/13/95 & Order, Exhibit U.) The Petitioner also filed a Motion to Correct Sentence in the Middlesex Superior Court on April 28, 1995. (Middlesex Docket 1989-02016; 1995 Mot. Correct Sentence, Exhibit V.) He argued in his motion that his "concurrent and from and after sentences [were] duplici[t]ious, and therefore constitute[ed] double jeopardy." (1995 Mot. Correct Sentence at 1.) On the same date that the Petitioner filed his Motion to Correct Sentence, he petitioned for a state writ of habeas corpus in the Middlesex Superior Court. (Middlesex Docket 1995-02633, Exhibit E.) In a May 3, 1995 Opposition, the Commonwealth responded to the arguments raised in both the Petitioner's letter to Justice Quinlan and his Motion to Correct Sentence. (Commonwealth's Opp'n Def.'s Mot. Correct Sentence & Def't.'s Letter Treated as Mot., Exhibit W.)

In a May 30, 1995 Order on the margin of the Petitioner's letter, Justice Quinlan stated as follows: "Having ordered that the letter be treated as a motion for post-conviction relief and having reviewed the 'motion' and opposition thereto, the motion is denied. The defendant has been given the 139 days jail credit as directed by the Appeals Court." (Middlesex Docket 1989-

02016; Letter from Donnelly to Quinlan of 4/13/95 & Order.) It is clear that Justice Quinlan's May 30, 1995 Margin Order disposed of both the Petitioner's April 13, 1995 letter and his April 28, 1995 Motion to Correct Sentence, as the Margin Order indicated that it took into account the Commonwealth's Opposition (Letter from Donnelly to Quinlan of 4/13/95 & Order), and the Commonwealth's Opposition addressed both the April 13, 1995 letter and the April 28, 1995 Motion to Correct Sentence (Commonwealth's Opp'n Def.'s Mot. Correct Sentence & Deft.'s Letter Treated as Mot.).

The Petitioner's petition for a state writ of habeas corpus was denied by the Superior Court on October 30, 1995, and he filed a Notice of Appeal of that decision on November 8, 1995. (Id.) The Appeals Court affirmed the denial of habeas corpus relief in a July 31, 1996 decision. Commonwealth v. Donnelly, 41 Mass. App. Ct. 1102, 668 N.E.2d 381 (1996), Exhibit Q. Further appellate review was denied by the SJC on October 2, 1996. (SJC Docket FAR-08709, Exhibit J.) In re Donnelly, 423 Mass. 1108, 671 N.E.2d 951 (1996) (table decision), Exhibit R.

Also on October 2, 1996, the Petitioner was paroled from state custody. (Administrative Chronology, Exhibit HH, at 3.) His parole was revoked on July 17, 1998, and he was returned to confinement effective July 22, 1998. (Id. at 4.) The Petitioner was again paroled on December 18, 1998. (Id.) During his initial incarceration on his May 13, 1993 convictions, the Petitioner was awarded 122.5 days of earned time resulting from training, employment and education. (DOC Reports, Exhibit FF, at 9.)

On August 6, 1999, the Petitioner was arrested once more and charged in Middlesex County with the following offenses: two counts of assault with a dangerous weapon, in violation of M.G.L. c. 265, § 15B; one count of unauthorized use of a motor vehicle as a second offense,

in violation of M.G.L. c. 90, § 24; one count of driving while intoxicated, in violation of M.G.L. c. 90, § 24; one count of driving negligently or recklessly, in violation of M.G.L. c. 90, § 24; one count of driving after license suspension or revocation, in violation of M.G.L. c. 90, § 23; one count of failure to stop, in violation of M.G.L. c. 90, § 25; and one count of resisting arrest, in violation of M.G.L. c. 268, § 32. (Middlesex Docket 1999-01193, Exhibit F.)

In light of these charges, his parole was revoked on August 19, 1999. (Administrative Chronology, Exhibit HH, at 4.) On January 27, 2000, the Petitioner's probation in connection with his May 13, 1993 Middlesex County conviction was transferred to the Suffolk County Superior Court, and a final probation surrender hearing was held. (Suffolk Docket 1999-11105, Exhibit G.) At that time, the court found the Petitioner in violation of the terms and conditions of his probation and ordered the imposition of the sentence that had been suspended in 1993. (Id.) The Docket noted as follows: "Court orders suspended sentence imposed. May 13, 1993 to take effect as follows: MCI Cedar Junction – max: eight years, min: six years. This sentence said Defendant is presently serving." (Id.)

On April 2, 2002, the Petitioner pled guilty to and was sentenced on the following counts arising from his August 6, 1999 arrest: two counts of assault with a dangerous weapon; one count of unauthorized use of a motor vehicle as a second offense; one count of driving while intoxicated; one count of driving negligently or recklessly; one count of driving after license suspension or revocation; one count of failure to stop; and one count of resisting arrest (Middlesex Docket 1999-01193, Exhibit F.) The charges of driving negligently or recklessly, failure to stop, and resisting arrest were placed on file. (Id.) On the charge of assault with a deadly weapon, the Petitioner was required to post a \$100 bond and was placed on probation for three years. (Id.) On the remaining charges, he was sentenced to serve concurrent terms of two

and one-half years in a house of correction, to take effect from and after the expiration of the sentence that he was then serving. (Id.) The Petitioner filed a Motion to Revise and Revoke Sentence Pursuant to Mass. R. Crim. P. 29 in that case on April 30, 2002, and it was denied on May 29, 2002. (Id.)

On October 16, 2002, the Petitioner filed a pro se Motion to Correct an Illegal Sentence in the Suffolk Superior Court under the case number assigned to his probation case. (Id.; 2002 Mot. Correct Sentence, Exhibit X.) In a letter dated October 31, 2002, the Middlesex District Attorney's Office advised the Honorable Charles T. Spurlock, Regional Administrative Justice for the Suffolk Superior Court, that that motion related to "a Middlesex case in which probation has been transferred to Suffolk." (Letter from Grant to Spurlock of 10/31/02, Exhibit Y, at 1.) The District Attorney's Office "respectfully suggest[ed] that the present motion to correct the sentence should be assigned to Justice Quinlan, who imposed it." (Id. at 2.) Justice Quinlan was copied on the letter. (Id.)

As a result of the letter from the District Attorney's Office to the two justices, both justices issued rulings denying the Petitioner's October 16, 2002 Motion to Correct an Illegal Sentence. Specifically, Justice Spurlock denied the motion without a hearing on October 30, 2002, and his decision was entered on the docket of the Suffolk Superior Court case. (Suffolk Docket 1999-11105.) The Petitioner filed a Motion for Reconsideration of that decision on November 22, 2002, which was denied without a hearing on December 4, 2002. (Id.) He then filed a Notice of Appeal of the decision on December 16, 2002. (Id.) Additionally, on December 18, 2002, Justice Quinlan issued an "Order on Defendant's Motion to Correct Sentence" under the number of the Middlesex County case giving rise to the Petitioner's May 13, 1993 conviction. (Order on Def.'s Mot. Correct Sentence, Exhibit Z.) The Order stated in its

entirety as follows: “Having reviewed the defendant’s motion, the Commonwealth’s opposition and the decisions of the Appeals Court and in light of the issues having previously been rejected by the Appeals Court, the defendant’s Motion to Correct Sentence is DENIED.” (Id.) The Petitioner on June 12, 2003 obtained leave to file a notice of appeal of Justice Quinlan’s decision out of time, and that appeal was consolidated with the appeal of Justice Spurlock’s decisions. (Appeals Ct. Docket 2002-P-0186, Exhibit K; Middlesex Docket 1989-02016.)

There should be no doubt that Justice Quinlan’s December 18, 2002 Order disposed of the Petitioner’s October 16, 2002 Motion to Correct an Illegal Sentence, and not his April 28, 1995 Motion to Correct Sentence. First, Justice Quinlan stated that the issues before her had been addressed by the Appeals Court (Order on Def.’s Mot. Correct Sentence), and the Appeals Court had never addressed the double-jeopardy and duplicity claims raised in the Petitioner’s April 28, 1995 Motion to Correct Sentence (1995 Mot. Correct Sentence). See Donnelly, 41 Mass. App. Ct. 1102, 668 N.E.2d 381; Donnelly, 37 Mass. App. Ct. 1117, 641 N.E.2d 1366. Second, Justice Quinlan’s December 18, 2002 decision was rendered only about two months after the filing of the October 16, 2002 Motion to Correct an Illegal Sentence, while it was handed down more than seven years after the filing of the April 28, 1995 Motion to Correct Sentence. (Middlesex Docket 1989-02016; Suffolk Docket 1999-11105.) Third, the appeal of Justice Quinlan’s December 18, 2002 decision was entered on the same docket as and heard together with the appeal of Justice Spurlock’s decisions without any need for a motion to consolidate. (Appeals Ct. Docket 2002-P-0186.) Fourth, the Commonwealth’s filings in the Appeals Court stated that the Petitioner’s October 16, 2002 Motion to Correct an Illegal Sentence was disposed of by both Justice Spurlock and Justice Quinlan, and these statements were never challenged by the Petitioner. (Notice of Appearance as Counsel for Commonwealth,

Exhibit AA, at 1 (“On receipt of [the October 31, 2002 letter of the District Attorney’s Office], both the motion judge and the plea judge denied the same motion to correct the sentence.”

(emphasis in original) (citations omitted)); Commonwealth’s Br. & Supp’l R. App. to Appeals Ct., Exhibit DD, at 5-9 (stating that, “[o]n December 18, 2002, having received the copy of the Commonwealth’s letter, the plea judge [Justice Quinlan] also denied the same motion to correct the sentence [that had been denied by Justice Spurlock],” and that the appellate prosecutor’s “notice of appearance pointed out that both the motion judge and the plea judge had denied the same motion to correct the sentence”).³ In fact, the Petitioner appeared to acknowledge the accuracy of such statements. (Def.’s Mot. Strike, Exhibit BB, at 1-4 (indicating that Justice Quinlan’s decision related to Motion to Correct an Illegal Sentence that had never been placed on Middlesex Superior Court’s docket); Def.’s Aff. Supp. Mot. Strike, Exhibit CC, ¶ 10 (“I never received notice from anyone that my motion to correct an illegal sentence had also been filed in Middlesex County for consideration by Justice Quinlan.”), ¶ 13 (“[H]ad I received notice of Justice Quinlan’s denial of my motion to correct an illegal sentence, I would have timely filed a motion for reconsideration, as well as a timely notice of appeal from Justice Quinlan’s denial(s), as I did in Suffolk County from Justice Spurlock’s orders denying my said motions.”).)

In an August 17, 2004 Memorandum and Order, the Appeals Court affirmed Justice Spurlock’s denial of the Petitioner’s Motion to Correct Sentence and Motion to Reconsider, as well as Justice Quinlan’s decision of December 18, 2002. (Appeals Ct. Docket 2002-P-0186; Middlesex Docket 1989-02016.) Commonwealth v. Donnelly, 61 Mass. App. Ct. 1121, 813 N.E.2d 584 (2004), Exhibit S. The Petitioner continued to pursue his appeal by filing an Application for Leave to Obtain Further Appellate Review (“ALOFAR”) with the SJC on

³ Within a corresponding parenthetical in his Memorandum of Law in Support of His Motion to Dismiss Petition, the Respondent mistakenly referred to the date of the letter from the District Attorney’s Office as April 13, 1995.

September 7, 2004. (SJC Docket FAR-14358, Exhibit L; Appeals Ct. Docket 2002-P-0186.)
Commonwealth v. Donnelly, 442 Mass. 1111, 816 N.E.2d 1222 (2004) (table decision), Exhibit
T. His ALOFAR was denied on October 27, 2004. Id.

As the Respondent observed in his Memorandum of Law in Support of His Motion to Dismiss Petition, the underlying dockets may appear at first blush to be subject to the following alternate interpretation: Justice Quinlan's May 30, 1995 Margin Order disposed of the Petitioner's April 13, 1995 letter, but not his April 28, 1995 Motion to Correct Sentence; the Petitioner's October 16, 2002 Motion to Correct an Illegal Sentence was disposed of solely by Justice Spurlock's October 30, 2002 decision; and the Petitioner's April 28, 1995 Motion to Correct Sentence was not disposed of until Justice Quinlan's decision on December 18, 2002. (Attached hereto as Exhibit KK is a chart reflecting the better interpretation and the alternate interpretation of the litigation history.) As argued in the Respondent's Memorandum and established in the foregoing chronology, this interpretation cannot be found correct. The following is a summary of the factors discussed above that must be found to militate against such an interpretation: Justice Quinlan's May 30, 1995 Margin Order indicated that it took into account the Commonwealth's Opposition, which Opposition addressed both the Petitioner's April 13, 1995 letter and his April 28, 1995 Motion to Correct Sentence; Justice Quinlan's December 18, 2002 decision stated that the issues before her had been addressed by the Appeals Court, but the Appeals Court had never addressed the double-jeopardy and duplicity claims raised in the Petitioner's April 28, 1995 Motion to Correct Sentence; Justice Quinlan's December 18, 2002 decision was rendered much closer in time to the Petitioner's October 16, 2002 Motion to Correct an Illegal Sentence than to his April 28, 1995 Motion to Correct Sentence; the appeal of Justice Quinlan's December 18, 2002 decision was entered on the same docket as and heard

together with the appeal of Justice Spurlock's decisions without any need for a motion to consolidate; and the Commonwealth's filings in the Appeals Court stated that the Petitioner's October 16, 2002 Motion to Correct an Illegal Sentence was disposed of by both Justice Spurlock and Justice Quinlan, and these statements were never challenged by, and appear to have been acknowledged as accurate by, the Petitioner.

Moreover, and quite importantly, even after the Respondent's Motion to Dismiss Petition noted this alternative interpretation of the litigation history, neither of the Petitioner's two responses to the Motion to Dismiss Petition adopted such an interpretation. (Pet'r's Opp'n Mot. Dismiss Pet.; Letter from Donnelly to Court dated July 5, 2005.) In fact, consistent with his position before the Appeals Court, the Petitioner in no way challenged the interpretation of the docket that the Respondent argued was the correct interpretation. (Pet'r's Opp'n Mot. Dismiss Pet.; Letter from Donnelly to Court dated July 5, 2005.)

During his incarceration on his reinstated May 13, 1993 sentence and his April 2, 2002 sentences, the Petitioner was awarded 230 days of earned time resulting from training, employment and education. (DOC Reports, Exhibit FF, at 11.) He was transferred from Old Colony Correctional Center, a state correctional facility, to the Middlesex House of Correction, at county facility, on December 31, 2004. (Id., at 4.)

IV. The Proceedings in the Instant Habeas Corpus Action

The Petition at issue was filed in the United States District Court on December 28, 2004. On April 15, 2005, the Respondent filed a Motion to Dismiss Petition on the grounds that the Petition had not been filed within the statute of limitations provided for under 28 U.S.C. § 2254. (Resp't's Mot. Dismiss Pet.) As discussed in the foregoing section, within his argument on the statute of limitations issue, the Respondent put forth two potential interpretations of the docket in

the Petitioner's underlying criminal litigation, and then explained that one of those interpretations must be found correct. (Id.) The interpretation favored by the Respondent yielded the conclusion that no post-conviction or collateral challenge to the Petitioner's conviction was pending during AEDPA's first year of effectiveness, thus making the filing of his Petition more than one year after AEDPA's effective date untimely. (Id.)

The Respondent additionally indicated in his Motion to Dismiss Petition that, in light of the grounds for dismissal of the Petition, he would not address the merits of the Petition at that time. (Id.) He requested the opportunity to file an answer and a proposed scheduling order for the parties to brief the merits of the Petition in the event that his Motion to Dismiss Petition was denied. (Id.)

The Petitioner filed an opposition to the Motion to Dismiss Petition on May 16, 2005 and an additional letter to the Court responding to the Motion to Dismiss Petition on July 8, 2005. (Pet'r's Opp'n Mot. Dismiss Pet.; Letter from Donnelly to Court dated July 5, 2005.) Significantly, as noted above, nowhere in either of these responses to the Motion to Dismiss Petition did the Petitioner adopt the above-referenced alternate view of his litigation history or otherwise challenge the interpretation of the litigation history supported by the Respondent. (Pet'r's Opp'n Mot. Dismiss Pet.; Letter from Donnelly to Court dated July 5, 2005.) Instead, the Petitioner implied that his one-year limitations period must be found to have commenced on October 27, 2004, when the SJC denied his ALOFAR with respect to the denial of his October 16, 2002 Motion to Correct an Illegal Sentence by Justice Spurlock on October 30, 2002 and Justice Quinlan on December 18, 2002. (Pet'r's Opp'n Mot. Dismiss Pet., at 1-2; Letter from Donnelly to Court dated July 5, 2005, at 6-7.) The Petitioner did not address the Respondent's citation of case law to the effect that an expired period of limitations may not be restarted and

then tolled by the filing of motions for post-conviction or collateral relief (Mem. Supp. Mot. Dismiss Pet. at 13-14). (Pet'r's Opp'n Mot. Dismiss Pet.; Letter from Donnelly to Court dated July 5, 2005.)

On July 14, 2005, the Court issued its Order requesting the filing of this Supplementary Brief.

ARGUMENT

The above chronology affirms that the Petition is time-barred.

Based on the foregoing, it is clear that the Petition was filed beyond the limitations period applicable to habeas corpus cases challenging state convictions. That statute provides as follows:

(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of –

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2244(d), as amended by AEDPA, P.L. No. 104-132, 110 Stat. 1214 (effective April 24, 1996).

In cases where the conviction at issue became final prior to AEDPA's effective date of April 24, 1996, courts have afforded a one-year grace period for those incarcerated to file habeas corpus petitions. See, e.g., Gaskins v. Duval, 183 F.3d 8, 9 (1st Cir. 1999) (concluding that one-year grace period should be afforded where cause of action accrued before April 24, 1996). See also Rogers v. United States, 180 F.3d 349, 355 & n.13 (1st Cir. 1999) (recognizing one-year grace period for motions pursuant to 28 U.S.C. § 2555 and concluding that period ended on April 24, 1997). The tolling provision contained in § 2244(d)(2) has likewise been made applicable to this judicially-crafted grace period. See, e.g., Gaskins, 183 F.3d at 10 (noting trend of circuit and district courts in applying tolling provision to grace period); Huenefeld v. Maloney, 62 F. Supp. 2d 211, 218 (D. Mass. 1999) (“[T]he tolling provisions of § 2244(d)(2) do apply to the judge made grace period.”).

Given that the judgment attacked in the Petition was entered prior to AEDPA's effective date, the limitations period for the Petitioner ended on April 24, 1997, unless it was tolled by the pendency of a “properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim,” 28 U.S.C. § 2244(d)(2). See, e.g., Gaskins, 183 F.3d at 9; Rogers, 180 F.3d at 355 & n.13.⁴ Here, a proper reading of the underlying litigation history establishes that the Petitioner's April 28, 1995 Motion to Correct Sentence was disposed of by Justice Quinlan on May 30, 1995. Thus, neither this motion nor any other motion for collateral

⁴ The Petitioner's petition for a state writ of habeas corpus would not have tolled the limitations period, because such a petition cannot be used to attack a conviction on the merits. See Sheriff of Suffolk County v. Pires, 438 Mass. 96, 99-100, 777 N.E.2d 1231, 1233-34 (2002) (stating that state writ of habeas corpus cannot be used to challenge merits of criminal conviction).

relief was pending during the first year after AEDPA's effective date, and the Petitioner's time for seeking federal habeas relief expired on April 24, 1997.

As the Petition at issue was not filed until more than seven years after this date, it is time-barred. Contrary to the suggestion by the Petitioner (Pet'r's Opp'n Mot. Dismiss Pet., at 1-2; Letter from Donnelly to Court dated July 5, 2005, at 6-7), the fact that the Petitioner sought additional collateral review years after the April 24, 1997 deadline does not impact this analysis. The tolling provisions contained in 28 U.S.C. § 2244(d)(2) do not provide for a limitation period that has already expired to be restarted and then tolled. *See, e.g., Delaney v. Matesanz*, 264 F.3d 7, 11 (1st Cir. 2001) (concluding that AEDPA's limitations period was not tolled by new trial motion because, by the time it was filed, the one-year period had already expired); *Dunker v. Bissonnette*, 154 F. Supp. 2d 95, 103 (D. Mass. 2001) (stating that state-court motion filed after AEDPA's limitation period expired did not "revive" statute of limitations). Thus, the Petition filed on December 28, 2004 remains untimely and must be dismissed. *See, e.g., Voravongsa v. Wall*, 349 F.3d 1, 8 (1st Cir. 2003) (affirming dismissal of petition that was not timely filed).

CONCLUSION

For the foregoing reasons, this Court should allow the Respondent's Motion to Dismiss.

Respectfully submitted,

THOMAS F. REILLY
Attorney General

/s/ Randall E. Ravitz
Randall E. Ravitz (BBO # 643381)
Assistant Attorney General
Criminal Bureau
One Ashburton Place
Boston, Massachusetts 02108
(617) 727-2200, ext. 2852

Dated: August 26, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served on August 26, 2005, by first-class mail, postage prepaid, upon:

Gregory Donnelly
Middlesex House of Correction
269 Treble Cove Road
Billerica, MA 01862

pro se

/s/ Randall E. Ravitz
Randall E. Ravitz

EXHIBITS

- EXHIBIT EE. Docket in connection with Commonwealth v. Gregory Donnelly, Case Nos. 74020 and 74021 in the Plymouth County, Massachusetts, Superior Court (“Plymouth Docket Nos. 74020 & 74021”)
- EXHIBIT FF. Booking Search Results, Sentencing Information, and Inmate Sentence Listings concerning Gregory Donnelly supplied by the Massachusetts Department of Correction (“DOC Reports”)
- EXHIBIT GG. Docket in connection with Commonwealth v. Gregory Donnelly, Case No. 8763-CR-1939 in the Gardner, Massachusetts, District Court (“Gardner Docket No. 8763-CR-1939”)
- EXHIBIT HH. Exhibit 8 to the Habeas Corpus Petition filed by the Petitioner, a Massachusetts Department of Correction Administrative Chronology concerning Gregory Donnelly (“Administrative Chronology”)
- EXHIBIT II. Indictments and initially prepared dockets in connection with Commonwealth v. Gregory Donnelly, Case Nos. 1989-02016 through 1989-02018 in the Middlesex County, Massachusetts, Superior Court (“Middlesex Indictments & Initial Dockets”)
- EXHIBIT II. Order revising and revoking sentence dated February 28, 1990 in connection with Commonwealth v. Gregory Donnelly, Case No. 1989-02016 in the Middlesex County, Massachusetts, Superior Court (“Order of Feb. 28, 1990”)
- EXHIBIT KK. Chart: Selected Litigation Events, with Better Interpretation and Alternate Interpretation of Activity



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108-1598

THOMAS F. REILLY
ATTORNEY GENERAL

(617) 727-2200
www.ago.state.ma.us

August 26, 2005

Via First-Class Mail

Ms. Sarah A. Thornton, Clerk
United States District Court
District of Massachusetts
John Joseph Moakley U.S. Courthouse
One Courthouse Way
Boston, MA 02210

Re: *Gregory Donnelly v. Bernard Brady*,
Civil Action No. 04-12706-RWZ

Dear Ms. Thornton:

Enclosed for filing please find *Respondent's Supplementary Brief in Support of His Motion to Dismiss Petition*. A copy of this document without its Exhibits is being filed electronically, along with a corresponding *Notice of Filing with Clerk's Office*. Please do not hesitate to contact me if you have any questions regarding the enclosed. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Ravitz", written over a horizontal line.

Randall E. Ravitz

cc: Gregory Donnelly, pro se (via first-class mail)

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EXHIBIT EE

SUPERIOR COURT, CRIMINAL

INDICTMENT

No. 74020

COMMONWEALTH

VS.

GREGORY M. DONNELLY
Brockton

DATE	OFFENSE	PLACE	PRESIDING JUSTICE	COUNSEL FOR DEFENDANT
1980				
July 15	Armed Robbery	Brockton		
July 18				
July 18				
July 30				
August 14				
August 28				
September 4				
Sept. 5				

DOCKET ENTRIES

(1) Returned into court and ordered filed

(2) Appearance of Lehan, for the deft.

(3) Pleads not guilty

(4) Order for the transmittal of bail

Prince, J.

(5) Pre-trial conference report to be filed by August 7, 1980

Prince, J.

Appearance of Mulholland for the Commonwealth

(7) Bail, 25,000 (real estate) Richard and Patricia Donnelley surety

(8) pre-trial conference report filed August 14, 1980

(9) Commonwealth's answers to request for discovery

(10) Certificate of protracted trial

(11) Jury of 14 empanelled

(12) Verdict of Guilty

(13) Sentenced to 20 years Massachusetts Correctional Institute at Concord (42 credit days)

(14) Deft. notified to right of appeal

(15) Clerks written statement under Supreme Court rule 65

(16) Warrent for commitment

S.A.1

SUPERIOR COURT, CRIMINAL

No. 74021

INDICTMENT

COMMONWEALTH

VS.

GREGORY M. DONNELLY
 Brockton

OFFENSE	PLACE	PRESIDING JUSTICE	COUNSEL FOR DEFENDANT
Assault and Battery by means of a dangerous weapon	Brockton		

DOCKET ENTRIES

DATE	DOCKET ENTRIES
1980	
July 15	(1) Returned into court and ordered filed
18	(2) Pleads not guilty
	(3) Order of the transmittal of bail (See 74020)
	(4) Pre-trial conference report to be filed by August 7, 1980
Aug. 14	(5) Pre-trial conference report (See 74020)
28	(6) Commonwealth's answers to request for discovery (See 74020)
Sept. 4	(7) Certificate of protracted trial (See 74020)
	(8) Jury of 14 impannelled (See 74020)
5	(9) Verdict of guilty
	(10) Sentenced to 10 years at Massachusetts Correctional Institute at Concord
	(11) Deft. advised of his right to appeal sentence imposed
	(12) Clerks written statement under Supreme Court Rule 65 (See 74020)
	(13) Warrant for commitment
	Taveria, J.

S.A. 2

EXHIBIT FF

Massachusetts Department of Correction - [Booking Search - W_ADM_SCR]

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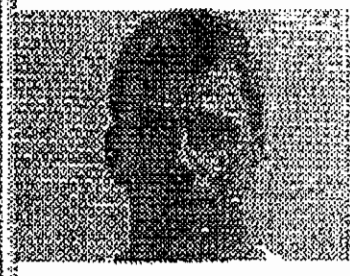
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Commit # Last Name First Name Date of Birth Age
 Race Hispanic ☐ Culture Sex Docker #
 State ID # FBI Number PCF # INS. Alert #
 Driver's License State Driver's License # Social Security #
 Institution Inmate Status
 Distinguishing Characteristic Type Distinguishing Characteristic Location

Station Clear

SEARCH QUERY RESULTS

Commit #	Last Name	First Name	MI. Suffix	Institution	Birth Date	Status
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W47826	DONNELLY	GREGORY	E	MEI-SHIPPEN-MEDIC	19580231	RELEASE
W68860	DONNELLY	GREGORY	M	OLD COLONY CORRE	1961230	RELEASE
W6 3360				12/31/07		

PHOTO 

Details | Booking Navigation | Save | Exit

Record 1/3

Massachusetts Department of Correction - [Sentence Info - W_ADM_SENT]																																																																	
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Massachusetts Department of Correction - [Sentence Info - W ADM SEN]									
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Paragraph:		Sub Paragraph:		Category:		Maximum: 10		6	
Type: State Prison		Gen. Desc'n: Vehicular Homicide		Committed:		Reason:			
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Record 1/2									

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Record 1/5									

Inmate Sentence Listing
C47732 DONNELLY, GREGORY N

Report Date: 2005 0825 14:17:02

Sentence Unit: A

Sent #:	1	Statute:	265	17	140
ARMED ROBBERY					
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Sent. Type:	Reformatory			PE:	19820724
Imposed:	19800905			Min:	
Invoked:	19800905	TO 20Y		Max:	20000724
Jail Credit:	42			Gcd:	19920507
Effective:	19800725				
Court:	PLYMOUTH SC-BROCKTON				
Docket:	74020				

Sent #:	2	Statute:	265	15A	b	171
Off. Date:	19800519					
Sent. Type:	Reformatory			PE:	19810724	
Imposed:	19800905			Min:		
Invoked:	19800905	TO 10Y		Max:	19900724	
Jail Credit:	42			Gcd:	19860615	
Effective:	19800725					
Court:	PLYMOUTH SC-PLYMOUTH					
Docket:	74021					

Sent #:	3	Statute:	265	19	150
UNARMED ROBBERY					
Off. Date:	19791128				
Sent. Type:	Reformatory			PE:	19820328
Imposed:	19800929			Min:	
Invoked:	19800929	TO 12Y		Max:	19920928
Jail Credit:	0			Gcd:	19870930
Effective:	19800929				
Court:	PLYMOUTH SC-BROCKTON				
Docket:	73674				

DONNELLY, GREGORY N

1 Years Probation Restrictions.	1 Years Earn Good Time Restrictions.
1 Years Work Release Restrictions.	1 Years Statutory good Time Restrictions.
1 Years Parole Restrictions.	1 Years Camp Time Restrictions.
	1 Years Furlough Restrictions.

Inmate Sentence Listing

C47732

DONNELLY, GREGORY N

Report Date: 2005 0825 14:17:02

Sentence Unit: A

Sent #: 7	Statute:	266	49	512
POSS. OF BURGLARIOUS INSTRUMENTS				
Off. Date:	19800704			
Sent. Type:	Reformatory	PE:	19810511	
Imposed:	19801112	Min:		
Invoked:	19801112	TO 2Y 6M	Max:	19830511
Jail Credit:	0	Gcd:	19820905	
Effective:	19801112			
Court:	PLYMOUTH SC-PLYMOUTH			
Docket:	83292			

Sent #: 8	Statute:	265	19	150
UNARMED ROBBERY				
Off. Date:	19771125			
Sent. Type:	Reformatory	PE:	19810928	
Imposed:	19800929	Min:		
Invoked:	19800929	TO 10Y	Max:	19900928
Jail Credit:	0	Gcd:	19860726	
Effective:	19800929			
Court:	SUFFOLK SUPERIOR COURT			
Docket:	019241			

Paroled	Revoked	Returned	Escaped	Returned
-----	-----	-----	-----	-----

Combined dates as of 20020227 17:57

Time on parole:	0	Original	Revised	Adjusted
Dead time(parole):	0	PE Date :	19820724	
Dead time (escape):	0	Minimum :		
Earned time:	198.50	Maximum :	20000107	
Forfeitures:	.0	GCD Date:	19911021	
Restorations:	.0			

Inmate Sentence Listing

C47732

DONNELLY, GREGORY N

Report Date: 2005 0825 14:17:02

Sentence Unit: B

Sent #: 1 Statute: 90 24 1 A 1 741

Subparagraph 1

Off. Date: 19871022
Sent. Type: WORCESTER PE: 19900526
Imposed: 19890825 Min:
Invoked: 19890825 TO 2Y Max: 19910526
Jail Credit: 90 Gcd: 19901127
Effective: 19890527
Court: GARDNER DC
Docket: 8763CR1939A

Crime on Parole

Paroled Revoked Returned Escaped Returned

Combined dates as of 20020227 18:12

		Original	Revised	Adjusted
Time on parole:	0			
Dead time(parole):	0	PE Date :		19900525
Dead time (escape):	0	Minimum :		
Earned time:	112.50	Maximum :		19901108
Forfeitures:	.0	GCD Date:		19900512
Restorations:	.0			

Inmate Sentence Listing

W47826 DONNELLY, GREGORY

Report Date: 2005 0825 14:18:29

Sentence Unit: A

Sent #: 1 Statute: 90 24G a 121
 Vehicular Homicide

Off. Date: 19890603
 Sent. Type: State Prison PE: 19960607
 Imposed: 19930513 Min: 19991007
 Invoked: 19930513 10Y TO 10Y 6M Max: 20000407
 Jail Credit: 1313 Gcd: 19951215
 Effective: 19891008
 Court: *MIDDLESEX SUPERIOR COURT
 Docket: 89-2016

Crime on Parole 1 Years Earn Good Time Restrictions.
 1 Years Probation Restrictions. 1 Years Statutory good Time
 1 Years Work Release Restrictions. Restrictions.
 1 Years Parole Restrictions. 1 Years Camp Time Restrictions.
 1 Years Furlough Restrictions.

Sent #: 2 Statute: 90 24G a 121
 Vehicular Homicide

Off. Date: 19890603
 Sent. Type: State Prison PE: 19960607
 Imposed: 19930513 Min: 19991007
 Invoked: 19930513 10Y TO 10Y 6M Max: 20000407
 Jail Credit: 1313 Gcd: 19951215
 Effective: 19891008
 Court: *MIDDLESEX SUPERIOR COURT
 Docket: 89-2017

Crime on Parole 1 Years Earn Good Time Restrictions.
 1 Years Probation Restrictions. 1 Years Statutory good Time
 1 Years Work Release Restrictions. Restrictions.
 1 Years Parole Restrictions. 1 Years Camp Time Restrictions.
 1 Years Furlough Restrictions.

Paroled Revoked Returned Escaped Returned

Combined dates as of 20020227 21:58

		Original	Revised	Adjusted
Time on parole:	0			
Dead time(parole):	0	PE Date :		19960205
Dead time (escape):	0	Minimum :		19990606
Earned time:	122.50	Maximum :		19991206
Forfeitures:	.0	GCD Date:		19950814
Restorations:	.0			

Inmate Sentence Listing

W68860

DONNELLY, GREGORY M

Report Date: 2005 0825 14:09:36

Sentence Unit: A

Sent #: 4 Statute: 1ST 90 24 1 a 1 741
DUI, 1ST, EFF. 5-27-94

Off. Date: 19990806
Sent. Type: MIDDLESEX PE:
Imposed: 20020402 Min:
Invoked: TO 2Y 6M Max:
Jail Credit: 0 Gcd:
Effective: F&A 1
Court: MIDDLESEX CAM SUP CRT
Docket: MICR-1999-1193-004
Held As Warrant

Sent #: 5 Statute: 90 23 710
OPER. M/V AFTER SUSP. OR REV. OF LICENSE

Off. Date: 19990806
Sent. Type: MIDDLESEX PE:
Imposed: 20020402 Min:
Invoked: TO 2Y 6M Max:
Jail Credit: 0 Gcd:
Effective: F&A 1
Court: MIDDLESEX CAM SUP CRT
Docket: MICR-1999-1193-006
Held As Warrant 60 Days Earn Good Time Restrictions.
60 Days Probation Restrictions. Statutory good Time Restrictions.
60 Days Work Release Restrictions.
60 Days Parole Restrictions. 60 Days Furlough Restrictions.

Paroled Revoked Returned Escaped Returned

Combined dates as of 20050111 13:48

Time on parole:	0	Original	Revised	Adjusted
Dead time (parole):	0	PE Date :	20021130	20020414
Dead time (escape):	0	Minimum :	20061130	20060414
Earned time:	230.00	Maximum :	20081130	20080414
Forfeitures:	.0	GCD Date:	20050818	20041231
Restorations:	.0			

EXHIBIT GG

DOCKET		COURT DIVISION Gardner		NAME, ADDRESS AND ZIP CODE OF DEFENDANT Gregory Donnelly Unknown address 112 MAIN ST. WESTMINSTER, MASS.		<input type="checkbox"/> Waived <input type="checkbox"/> Retained <input checked="" type="checkbox"/> Assigned	
DEF. DOB 12-30-58		OFFENSE CODE(S) 40/111/900/116		TERMS OF RELEASE 1-15-88 5,000 ⁴/₅ or 500 cash Surety			
DATE OF OFFENSE 10/22/87		PLACE OF OFFENSE Westminster		DATE 11-18-87		PROCEEDING	
COMPLAINANT Robert Cudak (Hawkins, Jr.)		POLICE DEPARTMENT Westminster				<input checked="" type="checkbox"/> Arraigned before J. PHILBIN <input checked="" type="checkbox"/> Advised of right to counsel <input type="checkbox"/> Advised of right to drug exam <input type="checkbox"/> Advised of right to bail review <input checked="" type="checkbox"/> Advised of right to F.I. Jury Trial <input checked="" type="checkbox"/> Waives <input type="checkbox"/> Requests F.I. Jury Trial <input type="checkbox"/> Warrant issued <input type="checkbox"/> Default warrant issued <input type="checkbox"/> Default removed <input type="checkbox"/> Warrant recalled <input type="checkbox"/> Warrant issued <input type="checkbox"/> Default warrant issued <input type="checkbox"/> Default removed <input type="checkbox"/> Warrant recalled	
DATE OF COMPLAINT 11/17/87		RETURN DATE AND TIME Warrant					

COUNT OFFENSE A. OPERATING UNDER THE INFLUENCE OF LIQUOR C90 S24				FINE —		SURFINE —		TOTAL DUE 25	
DATE 11-18-87		PLEA <input checked="" type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty <input type="checkbox"/> Nolo		IMPRISONMENT AND OTHER DISPOSITION 2 years H.C. 90 days to be served forthwith w/ probation 2 years to 1-15-90 - BAL. Susp. NO APPEAL					
		<input type="checkbox"/> New Plea: <input type="checkbox"/> Admits suff. facts							
1-15-88		FINDING G		JUDGE PHILBIN					
		<input type="checkbox"/> Cont. w/o finding until:		FINAL DISPOSITION <input type="checkbox"/> Discharged from probation <input type="checkbox"/> Dismissed at request of probation					
		<input type="checkbox"/> Appeal of find. & disp. <input type="checkbox"/> Appeal of disp.		DATE					

COUNT OFFENSE B. OPERATING A MV WITHOUT A LICENSE C90 S10				FINE		SURFINE		TOTAL DUE	
DATE 11-18-87		PLEA <input checked="" type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty <input type="checkbox"/> Nolo		IMPRISONMENT AND OTHER DISPOSITION					
		<input type="checkbox"/> New Plea: <input type="checkbox"/> Admits suff. facts							
1-15-88		FINDING G		JUDGE PHILBIN					
		<input type="checkbox"/> Cont. w/o finding until:		FINAL DISPOSITION <input type="checkbox"/> Discharged from probation <input type="checkbox"/> Dismissed at request of probation					
		<input type="checkbox"/> Appeal of find. & disp. <input type="checkbox"/> Appeal of disp.		DATE					

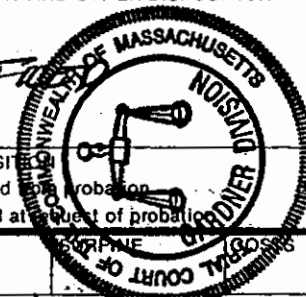
COUNT OFFENSE C. GIVE FALSE NAME PO C268 S34				FINE		SURFINE		TOTAL DUE	
DATE 11-18-87		PLEA <input checked="" type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty <input type="checkbox"/> Nolo		IMPRISONMENT AND OTHER DISPOSITION					
		<input type="checkbox"/> New Plea: <input type="checkbox"/> Admits suff. facts							
1-15-88		FINDING G		JUDGE PHILBIN					
		<input type="checkbox"/> Cont. w/o finding until:		FINAL DISPOSITION <input type="checkbox"/> Discharged from probation <input type="checkbox"/> Dismissed at request of probation					
		<input type="checkbox"/> Appeal of find. & disp. <input type="checkbox"/> Appeal of disp.		DATE					

COUNT OFFENSE D. OP. AFTER LIC. OR RT. TO OP. REV. C90 S23				FINE		SURFINE		TOTAL DUE	
DATE 11-18-87		PLEA <input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty <input type="checkbox"/> Nolo		IMPRISONMENT AND OTHER DISPOSITION					
		<input type="checkbox"/> New Plea: <input type="checkbox"/> Admits suff. facts							
1-15-88		FINDING G		JUDGE PHILBIN					
		<input type="checkbox"/> Cont. w/o finding until:		FINAL DISPOSITION <input type="checkbox"/> Discharged from probation <input type="checkbox"/> Dismissed at request of probation					
		<input type="checkbox"/> Appeal of find. & disp. <input type="checkbox"/> Appeal of disp.		DATE					

CONT. TO	PURPOSE	CONT. TO	PURPOSE	DATE	TAPE NO.	START	STOP
11-18-87	arraign			8-2-89	S.H.	NEED HAB MCI	CONCORD
1-15-88	TRIAL			8-25-89	S.H.	NEED HAB MCI	CONCORD
1-15-90	Prob						
7-19-89	S.H.						
7-26-89	S.H.	Atake to MCI Concord					

NOTIFY COMPLAINANT

S.A. 17



A TRUE COPY: **W. T. C. Cent.**
 ATTEST: **Clerk-Magistrate Westminister**

EXHIBIT HH

ADMINISTRATIVE CHRONOLOGY

NAME

Donnelly, Gregory

IDENTIFIER:

C-47732

Date	
6-8-88	Paroled to Residential Alcohol Program (R)
6-19-89	Revoked
6-20-89	Ret (effect: 6-6-89)
7/28/89	Concord Class bd, Gardner vote 3/0
7-31-89	Cambridge S.C. + Ret'd (#89-2014 to 89-2022) Pled Guilty to Manslaughter
8-11-89	Concord D.C. + Ret'd (#89-1001562)
8-14-89	SUPERINTENDENT'S DECISION: NCCI-GARDNER
8-14-89	COMMISSIONER'S DECISION: NCCI-GARDNER
8-14-89	TRANSFER TO: NCCI-GARDNER
8/21/89	Quota at need
8/21/89	Deal - Thayer Hall. Mr 1/90, resale (cop)
8-25-89	To Gardner SC & ret'd (#89-2014) Probation revoked. (Cambridge SC & ret'd) 2 yrs H/C SC (not ret'd) (96)
9-6-89	To Camb SC & ret'd (#89-2014) Cont'd 9-29-89 (96)
9-29-89	To Cambridge SC & ret'd; #89-2014 cont'd 10-5-89 (96)
10-25-89	Have to Cambridge SC & ret'd; #89-2014 cont'd 10-17-89 (96)
11-17-89	Have To Cambridge SC + RET'd; #89-2014.
11-20-89	Have To Cambridge SC + RET'd;
12-4-89	Have to Cambridge SC. + ret'd; #89-2014 Contd until 12/11/89 have same
12-11-89	To Cambridge Sup. Ct. & remanded. (R) have (96)
1-10-90	returned from remanded.
1-24-90	Rec'd forthwith to Mc. Anselme CDD 4/15/95
4-12-94	Trans Mc. Shirley med (R)
5-1-95	UTR Bd: rec. remain at MCI-Shirley (med), rev. 11/95
10-25-95	Parole Board (officer) Parole denied. AR 7/96
11-17-95	Unit team recommends inmate placement at Smcc. Rev 5-96

EXHIBIT "8-A"

L1

ADMINISTRATIVE CHRONOLOGY

NAME:

Donnelly Gregory

IDENTIFIER:

C47732

DATE	INITIALS	
1-9-95	YHS	COD to Concord sentence 4/15/
3-29-95		on P.V. warrant (off 1-9-95)
5-1-95		Habe <u>Twice</u> SC & note MICV 90-018-
		Continued Habe to be forwarded
		Unit Team recommendations remain
		Sh med. Rv 11/95
5-10-95		Supers decision: remain Sh (med,
1-7-95		On habe to <u>Twice</u> SC & note.
2-25-95		MICV 90 01833. Cont - no date
		Habe to Cambridge S.C. & note.
		MICV 95 0233 Civil - under
		advisement. Remain
2-15-95		Supers decision. modified from
		Shirley (m), seen JHA prog Rv 5/9
1-10-96		from Shirley (m)
1-10-96		QRI update @
2-6-96	SH	Habe to Comb. Sup Court - taken and
		advisement

EXHIBIT "8-B"

5

ADMINISTRATIVE CHRONOLOGYNAME: Donnelly, GregoryIDENTIFIER: C47732

DATE	INITIALS	
8-2-96	NP	PBV - Reserve after Completion of ERP program S/D; S/D; frequent Absence, Report to Probation of August release, not before - reserve not before 9-30-96 frequent Absence, all, Money where work 2 weeks
8-20-96	JMS	QdI updated
8-27-96	JMS	CL Bd rec remain dec to reserve date to 2/97
7-12-96	RB	Commissioner Approved Class Board of 2-16-
9/20/96	(m)	Met w/ attorney Ed Haffney Attorney given copies of Adm. Chronology C47732 w/ Parole consent copy PV warrant copy memo re: PV warrant execution Copy Sentence Hearing W47824 (m)
9-23-96	RB	Superintendent Approved Class Bd of 8-29
10-2-96	mc	Parole
11-5-96	SH	6part & prior 6part and mitt sent to MCI-Concord Archives

EXHIBIT "8-C"

ADMINISTRATIVE CHRONOLOGY

Name: *Donnelly, Gregory*Identifier: *C4773*

Date	Initial	
7-17-98	SH	Revoked
7-22-98	SH	Rel'd to con (eff 7-22-98)
8-25-98	SD	Sent Sentence listing And D.F.S. Sheet 3 to Inmate and folder Audit.
10-1-98	CP	Moved to MINSHAM D/C + net # 9858 C21318
10-16-98	ILB	CASE Dismissal - NOT CRIM + CCC Board Recommends MCI Plymouth (3 to 0)
10-26-98	CL	SUPERINTENDENT'S DECISION: Plymouth COMMISSIONER'S DECISION: approved Plymouth Minimum
11-5-98		
11-23-98	CL	Transferred to Plymouth Minimum
12-18-98	DM	Paroled
8-19-99		Revoked
8-19-99		Get'd Concord (eff: 8-10-99)
9-15-99	KS	Dates sent / folder Audited
8-12-99	CP	MALBORO D/C + net 99-1184 - Cont NO date
9-3-99	CP	MALBORO D/C + net 99-1184 - Cont 11-6-99
9-24-99	CL	CCC Board recommends 3-0 NCCI(4)
9-29-99	CP	CAM S/L + net Cont 11-3-99
10/8/99	KS	SUPERINTENDENT'S DECISION: NOR Level 4
10/15/99	KS	COMMISSIONER'S DECISION: MCI NORFOLK Level 4
11-2-99	CP	SSC + net 99-11105 - Cont 11-30-99
12-4-99	CL	Final Placement Concord PWF Level 4

7/1

EXHIBIT II

Commonwealth of Massachusetts

MIDDLESEX, TO WIT:

At the SUPERIOR COURT, begun and holden
at the CITY OF CAMBRIDGE, within and for the County of Middlesex,
on the First Monday of July in the year of our
Lord one thousand nine hundred and eighty -nine


THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present, That
Gregory M. Donnelly

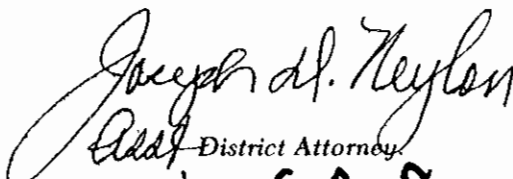
on the Third day of June
in the year of our Lord one thousand nine hundred and eighty -nine
at Concord, in the County of Middlesex aforesaid,

did operate a motor vehicle upon a way, as defined in General Laws
Chapter 90 Section 1, or in a place to which the public has a right
of access or upon a way or in a place to which the public has
access as licensees or invitees, while under the influence of
intoxicating liquor, and did operate said motor vehicle negligently
so that the lives or safety of the public might be endangered, and
by such operation so described did cause the death of another person,
to wit: Steven Danielson.

Against the peace of said Commonwealth, and contrary to the form of the statute in such case
made and provided.

A true bill.


Foreman of the Grand Jury.


District Attorney
S.A. 8

1991 March 29
Continued until April 26, 1993
status
Continued until May 19, 1993
trial agreement

Ch 90 S24G
M/V Hom - OUIL

COMMONWEALTH

vs.

Ch 90 S24G
M/V Hom - OUIL

COMMONWEALTH

vs.

Gregory M. Donnelly

SUPERIOR COURT, JULY sitting, 1989
6TH day - Returned by the Grand Jury
and filed in Court.

Robert J. Skell
Ass't. Clerk.

1989 JUL 31 Dfdtg in arraigned
and severally plead not guilty.

A jury is empanelled, viz.:

1989 NOVEMBER 20
CONTINUED UNTIL DECEMBER 11, 1989
FOR TRIAL AT 9:00.

1989 Jan 8
After Charge and before deliberation
Jurors Name and No.
2-4 *sent*
6-13 *Thibault*

1970 Jan. 24
Defendant has been notified by Clerk in open
Court of his right to appeal sentence this day
imposed to the "Appellate Division of the Su-
perior Court" for a review of sentence as provided
by G.L. Chap. 278, Sec. 28A, B, C.
(*Mr. Hughes*)

8 25 00 V.W. Fund on Court.
Def't notified of his right to
appeal on his verdict.

1992 Nov. 18
Continued until Dec 4/1992
status at 12 noon
1992 Dec 4
Continued until January 19, 1993
now send *McDonald*
1993 January 19
Continued until Feb 23, 1993
Continued until April 26, 1993
Continued until April 26, 1993
Continued until April 26, 1993

PLEA RETRACTED AND PLEA GUILTY
OFFERED AND ACCEPTED BY THE COURT
COMMONWEALTH MOVES FOR SENTENCE.

SENTENCE MASSACHUSETTS CORRECTIONAL

INSTITUTION *Cedar Junction*
FOR A TERM NOT EXCEEDING *7*.

SENTENCE MASSACHUSETTS CORRECTIONAL

INSTITUTION *Cedar Junction*
FOR A TERM NOT EXCEEDING *7*.

Disposition can't to
Jan. 24, 1990 at 200 Court Rm.
9B. (Diverse Hall.)
By the Court *Gregory M. Donnelly*
Mr. Hughes *Ass't. Clerk*

JAN 24 1990

SENTENCE MASSACHUSETTS CORRECTIONAL

INSTITUTION *Cedar Junction*
FOR A TERM NOT EXCEEDING *15*

OR MORE THAN *13* YEARS, OR LESS

THAN *13* YEARS

INSTITUTION *Cedar Junction*

SENTENCE MASSACHUSETTS CORRECTIONAL

THIS SENTENCE IS DEEMED BY THE
COURT TO HAVE COMMENCED

ON *1-24-90*

1993 motion for
 Antiquated Court of Appeal 26/1993
 states
 Ireland until May 19/1993
 trial agreement
 1993 May 12
 Court & Orders a
 mustard
 By the Court
 P. W. W. W. W.

S. A. 10

Ch 90 S24G
 M/V Hom - OUIL

COMMONWEALTH

vs.

Gregory M. Donnelly

SUPERIOR COURT, JULY sitting, 1989

6TH

day - Returned by the Grand Jury
 and filed in Court.

Robert F. Hill
 Asst. Clerk.

1989 JUL 4 Dfdtg in arraigned

and severally plead S not guilty.

1989 NOVEMBER 20
 A jury is empanelled, viz.:
 CONTINUED UNTIL DECEMBER 11, 1989
 FOR TRIAL AT 9:00.

1990 Jan 8
 After Charge and before deliberation

Jurors Name and No.

2-4 Paul
 6-13 Phil
 8-16 Bryant
 4-14 Tolson

Were withdrawn from panel, Ch.234A, S44

as amended

By the Court

(me through)

Asst. Clerk

1990 Jan 10

Verdict - Guilty
 Comm. moving for sentence
 (1990)

PLEA RETRACTED AND PLEA GUILTY
 OFFERED AND ACCEPTED BY THE COURT
 COMMONWEALTH MOVES FOR SENTENCE.

SENTENCE MASSACHUSETTS CORRECTIONAL

INSTITUTION. Elder function

FOR A TERM NOT EXCEEDING Ten

a Half 10 1/2 YEARS OR LESS

THAN Ten 10 YEARS

has sentenced to take effect
 forth with not with today
 The sentence is now being read
 of Mr. C. I. Emerald
 THIS SENTENCE IS DEEMED BY

THE COURT TO HAVE COMMENCED

ON THE DEFENDANT

HAVING BEEN IN CONFINEMENT

1174 DAYS NITTS ISSUED

BY THE COURT

Quinlan John Edmund
 ASSISTANT CLERK

1993 May 13

Defendant has been notified by Clerk in open
 Court of his right to appeal sentence this day
 imposed to the Appellate Division of the Su-
 preme Court for a review of sentence as provided
 by G.L. Chap. 278, Sec. 28A.B.C.
 1993

Commonwealth of Massachusetts

MIDDLESEX, TO WIT:

At the SUPERIOR COURT, begun and holden

at the CITY OF CAMBRIDGE,

within and for the County of Middlesex,

on the First

Monday of

July

in the year of our

Lord one thousand nine hundred and eighty -nine

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present, That
Gregory M. Donnelly

on the Third

day of June

in the year of our Lord one thousand nine hundred and eighty -nine

at Concord

, in the County of Middlesex aforesaid,

did operate a motor vehicle upon a way, as defined in General Laws Chapter 90 Section 1, or in a place to which the public has a right of access or upon a way or in a place to which the public has access as licensees or invitees, while under the influence of intoxicating liquor, and did operate said motor vehicle negligently so that the lives or safety of the public might be endangered, and by such operation so described did cause the death of another person, to wit: David Danielson.

Against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

A true bill.

Joseph A. Neelan
Asst. District Attorney.

Thomas P. Champion
Foreman of the Grand Jury.

JAN 24 1990

SENTENCE - MASSACHUSETTS CORRECTIONAL
INSTITUTION Cedar Junction
FOR A TERM NOT EXCEEDING 15

THAN 13 YEARS, OR LESS

This sentence to take effect from and after the
expiration of the sentence imposed this day in #88-22016

THIS SENTENCE IS DEEMED BY

THE COURT TO HAVE COMMENCED

ON _____, THE DEFENDANT

HAVING BEEN IN CONFINEMENT

4 DAYS, MITTS ISSUED

BY THE COURT

Mc Hugh J. George McHugh
ASSISTANT CLERK

19 20 Jan 24
Defendant has been notified by Clerk in open
Court of his right to appeal sentence this day
imposed to the Appellate Division of the Su-
preme Court for a review of sentence as provided
by G.L. Chap. 278, Sec. 28A, E.C.

(Mc Hugh)
+ notified right to appeal sentence.

Ch 90 S24G
MV Hom- QUIL

COMMONWEALTH

vs.

Gregory M. Donnelly

SUPERIOR COURT, July sitting, 1989

6TH day - Returned by the Grand Jury
and filed in Court.

Robert DeMello
Asst. Clerk.

1989 31 Dfdtd 14 arraigned
6 JULY
and severally pleaded not guilty.

1989 A jury is empanelled, viz:

1989 NOVEMBER 20
CONTINUED UNTIL DECEMBER 11, 1989
FOR TRIAL AT 9:00

1990 Jan 8
After Charge and before deliberation

Jury's Name and No. 2-4

Real # 6-13 Thibault

2-76 Dwyer

4-14 Logan

Panel withdrawn from panel, Ch. 234A, S44

as amended

By the Court

Mc Hugh George M. Lawrence
Asst. Clerk

1990 Jan 10
Verdict - Guilty
Comm. moves for sentence
Can't do Jan 24 1990 for Disap

Sentence imposed on
Jan 24, 1990 in this day
revised, 1990

ASSISTANT CLERK
BY THE COURT

HAVING BEEN IN CONFINEMENT

DAYS MITTS ISSUED
ON _____ THE DEFENDANT
THE COURT TO HAVE COMMENCED
THIS SENTENCE IS DEEMED BY

THAN _____ YEARS
OR LESS
FOR A TERM NOT EXCEEDING _____
SENTENCE MASSACHUSETTS CORRECTIONAL
INSTITUTION _____
MASSACHUSETTS CORRECTIONAL

S.A. 12

1993 May 13

PLEA RETRACTED AND PLEA GUILTY OFFERED AND ACCEPTED BY THE COURT COMMONWEALTH MOVES FOR SENTENCE.

SENTENCE MASSACHUSETTS CORRECTIONAL

INSTITUTION Edwin J. Sullivan

FOR A TERM NOT EXCEEDING Five

a Half YEARS OR LESS

THAN Five YEARS

This sentence to be served concurrently with the sentence imposed this day in # 89-2016

THIS SENTENCE IS DEEMED BY

THE COURT TO HAVE COMMENCED

ON _____ THE DEFENDANT

HAVING BEEN IN CONFINEMENT

1174 DAYS MITTS ISSUED

BY THE COURT

Jonathan J. Chalmers ASSISTANT CLERK

1993 May 13

Defendant has been notified by Clerk in open Court of his right to appeal sentence this day imposed to the Appellate Division of the Superior Court for a review of sentence as provided by G.L. Chap. 278 Sec. 26A, B.C.

Jonathan J.

39 May 13

Ch 90 S24G
MV Hom - QUIL

COMMONWEALTH

vs.

Gregory M. Donnelly

SUPERIOR COURT, July sitting, 1989

6TH day -- Returned by the Grand Jury and filed in Court.

Robert D. Hall
Asst. Clerk.

1989 July 31 Dfdr's arraigned

and severally pleads not guilty.

A jury is empanelled, viz:

1989 NOVEMBER 20
CONTINUED UNTIL DECEMBER 11, 1989
FOR TRIAL AT 9:00

1989 Jan 8
After Charge and before deliberation

Jury's Name and No. 1-4

Real # 6-13 Thibault

2-16 Dwyer

4-14 Lorton

W was withdrawn from panel, Ch. 234A, S44

as empanelled

By the Court

Gregory M. Donnelly Asst. Clerk

1990 Jan 10

Verdict - Guilty

Commonwealth moves for sentence.

1990 FEB 15. J & S

sentence imposed on Jan. 24, 1990 in this day resolved in sentence.

NEW SENTENCE

SENTENCE MASSACHUSETTS CORRECTIONAL

INSTITUTION Edwin J. Sullivan

FOR A TERM NOT EXCEEDING

15 YEARS OR LESS

THAN 13 YEARS

to Run concurrently with sentence imposed on Jan. 24, 1990 in this day

89-2016

SENTENCE IS DEEMED BY

COURT TO HAVE COMMENCED

ON _____ THE DEFENDANT

HAVING BEEN IN CONFINEMENT

39 DAYS MITTS ISSUED

THE COURT

Frederick W. Wainwright ASSISTANT CLERK

1993 May 12

sent Adolaine a Michael

By the Court

Frederick W.

Commonwealth of Massachusetts

MIDDLESEX, TO WIT:

At the SUPERIOR COURT, begun and holden

at the CITY OF CAMBRIDGE,

within and for the County of Middlesex,

on the First

Monday of

July

in the year of our

Lord one thousand nine hundred and eighty -nine

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present, That
Gregory M. Donnelly

on the Third

day of June

in the year of our Lord one thousand nine hundred and eighty -nine

at Concord

, in the County of Middlesex aforesaid,

did operate a motor vehicle upon a way, as defined in General Laws Chapter 90 section 1, or in a place to which the public has access or upon a way or in a place to which the public has access as licensee or invitees, while under the influence of intoxicating liquor, and did so operate said motor vehicle negligently, so that the lives or safe of the public might be endangered, and by said operation did cause serious bodily injury to a person, to wit: Christopher Lambert.

Against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

A true bill.

Thomas P. O'Connell

Foreman of the Grand Jury.

Joseph J. Neelan
Dist. District Attorney
S.A. 14

1993 May 12
PLEA RETRACTED AND PLEA GUILTY
OFFERED AND ACCEPTED BY THE COURT
COMMONWEALTH MOVES FOR SENTENCE.

SENTENCE MASSACHUSETTS CORRECTIONAL

INSTITUTION Edwin J. Sullivan

FOR A TERM NOT EXCEEDING

eight (8) YEARS, OR LESS

THAN eight (8) YEARS

This sentence to take effect from and after the
expiration of the sentence imposed this day in #89-2016

Sentence suspended for five years

19 9.3 May '13 Det. as Pr. and

J. J. Daley as Su.

recog. in \$100.00 and on

probation five years Defendant

not to operate a motor

Vehicle in Massachusetts

Defendant to be evaluated

for alcohol treatment

if treatment is needed. If

so under the supervision of the

Probation Dept.

Superior Court

Quincy

Ch 90 S24L
OUIL - Serious Injury

COMMONWEALTH

vs.

Gregory M. Donnelly

SUPERIOR COURT, July sitting, 1989

day - Returned by the Grand Jury
and filed in Court.

Robert F. Hall
Ass't. Clerk.

1989 July 31 Dfndt. is arraigned

and severally plead S not guilty.

A jury is empanelled, viz.:

1989 NOVEMBER 20
CONTINUED UNTIL DECEMBER 11, 1989
FOR TRIAL AT 9:00

1990 Jan 8
After Charge and before deliberation

Jurors Name and No. 2-7

#2-11a Dymally

#4-14 T. Allen

Were withdrawn from panel, Ch. 234A, S44

as amended

By the Court

(withheld)

1990 Jan 10

Verdict - Guilty

Comm. moved for sentence

Can't to Jan 24, 1990 Disap.

Asst. Clerk

Gregory M. Donnelly

Asst. Clerk

1990 Jan 24

Defendant has been notified by Clerk in open
Court of his right to appeal sentence this day
Imposed to the "Appellate Division of the Su-
perior Court" for a review of sentence as provided
by G.L. Chap. 278, Sec. 28A, E.C.

(Mr. Hugh J.)

right to appeal Verdict

1993 May 12

Court Declines a Motion

By the Court

Quincy

S.A. 16

EXHIBIT JJ

MIDDLESEX, SS.

Commonwealth of Massachusetts

SUPERIOR COURT

To the Sheriffs of our several Counties, their Deputies, and to the Superintendent of the Massachusetts Correctional Institution, Cedar Junction - ~~Concord~~ - Framingham - and Bridgewater.

GREETING:

WHEREAS, by the consideration of our Superior Court, holden at Cambridge within and for the County of Middlesex, on the first Monday of FEB, in the year of our Lord one thousand nine hundred and NINETY, GREGORY, M. DONNELLY now in custody of the Sheriff of our said County of Middlesex, now before the Court by virtue of Writ of Habeas Corpus, convict of the crime of M.V. HOM. O.V.I.L. CHAP. 90S24 G was on the 28TH day of FEB in the year of our Lord one thousand nine hundred and NINETY, sentenced to confinement in the Massachusetts Correctional Institution, Cedar Junction - ~~Concord~~ - Framingham - Bridgewater, for a term not exceeding 15 years or less than 13 years, and to stand committed accordingly to said sentence, this sentence is to be served concurrently with the sentence imposed ~~this day~~ in NO. 89-2016, this sentence is to be served concurrently with the sentence now being served in said institution, this sentence is to take effect from and after the expiration of the sentence now being served in said institution.

This sentence is deemed by the Court to have commenced on _____. The defendant having spent 39 days in confinement prior to such sentence awaiting and during trial.

WE, THEREFORE COMMAND YOU, the said Sheriff and Deputies to remove the said DONNELLY from our jail in Cambridge, in said County of Middlesex, to our said Massachusetts Correctional Institution in Cedar Junction ~~Concord~~ - Framingham - Bridgewater, and you the said Superintendent to receive the said DONNELLY and immediately thereon cause him her to be confined therein for a term of not exceeding 15 years or less than 13 years as aforesaid.

And for so doing, this shall be your warrant. And you are to make return of this warrant with your doings therein to the office of the Clerk of our Superior Court in Cambridge, as soon as may be.

Witness, R. Steedman, Esquire, at Cambridge, this 28TH day of FEB in the year of our Lord one thousand nine hundred and NINETY

Frederick B. Chaffin
Assistant Clerk

Date of off.

Form #240

3/9/89

S.A. 38

COMMONWEALTH OF MASSACHUSETTS.

MIDDLESEX, ss. 228 1990.

In obedience to this Warrant, I have removed the within-named convict to the Massachusetts Correctional Institution, _____ together with an attested copy of this warrant.

Ann Higgins 88PO
Deputy Sheriff.

No. 89-2017

Milimus — Massachusetts
Correctional Institution,

Chas. J. McArthur

Gregory Donnelly
1990 Feb. 28
Sentence imposed on
Jan. 24, 1990 in
this day we asked
3 of the Court
McArthur, J

To the Superintendent of the receiving Correctional Institution: you are hereby commanded to withdraw from _____'s inmate savings or personal accounts, as a court-imposed assessment, the first fifteen/twenty-five dollars deposited to those accounts, said sum to be paid to this court for deposit in the Victim/Witness Assistance Fund pursuant to G. L. C. 258B, as added by C. 694, Sec. 1 of Acts of 1983.

By the Court,

S.A. 39

EXHIBIT KK

**SELECTED LITIGATION EVENTS, WITH
BETTER INTERPRETATION AND ALTERNATE INTERPRETATION OF ACTIVITY**

(Arrows indicate that a motion was disposed of by a given order)

Better Interpretation

Alternate Interpretation

